

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

ROLAND C. SPERBERG,)	
)	
Petitioner,)	
vs.)	2:09-cv-22-WTL-DML
)	
H.J. MARBERRY, Warden,)	
)	
Respondent.)	

Entry Concerning Selected Matters

The court, having considered the above action and the matters which are pending, makes the following rulings:

1. Consistent with the discussion and Order of the Court of Appeals in *Sperberg v. Marberry*, 2010 WL 2531856 (7th Cir. June 23, 2010), and with the parties' Local Rule 16.2 statement, the court finds that a remedy under 28 U.S.C. § 2255 is "inadequate or ineffective to test the legality" of Mr. Sperberg's continued detention as that term is used in 28 U.S.C. § 2255(e), that Mr. Sperberg is serving an illegally ACCA enhanced sentence imposed by the United States District Court for the Western District of Wisconsin in No. 04-CR-84-S-01, that the ACCA enhanced sentence is because the sentence exceeds the otherwise-applicable statutory maximum for his crime because he is ineligible (and does not qualify) for sentencing as an Armed Career Criminal under 18 U.S.C. § 924(e), and that Mr. Sperberg is therefore entitled to the relief he seeks in this action pursuant to 28 U.S.C. § 2241(c)(3). He is entitled to be resentenced by the court of conviction without the ACCA enhancement.

2. The petition for writ of habeas corpus is **granted**. Final judgment will now issue. The final judgment will do two things. First, it will vacate the petitioner's ACCA-enhanced sentence in No. 04-CR-84-S-01. Second, it will direct that a copy of the certain materials from the file in this case be forwarded with a copy of the Judgment to the Clerk of the United States District Court for the Western District of Wisconsin for filing in No. 04-CR-84-S-01.

IT IS SO ORDERED.

Date: 10/26/2010



Hon. William T. Lawrence, Judge
United States District Court
Southern District of Indiana